

Appl. No. 10/710,935  
Amdt. dated July 28, 2006  
Reply to Office action of June 28, 2006

### REMARKS/ARGUMENTS

#### **1. Election/Restriction**

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- 5 I. Claims 1-8, drawn to a semiconductor device classified in class 257, subclass 314.  
II. Claims 9-20, drawn to semiconductor manufacturing method, classified in class  
438, subclass 257.

The inventions are distinct, each from the other because of the following reasons:

- 10 Inventions II and I are related as process of making and product made. The  
inventions are distinct if either or both of the following can be shown: (1) that the process  
as claimed can be used to make other and materially different product or (2) that the  
product as claimed can be made by another and materially different process (MPEP  
§806.05(f)). In the instant case, the device of the group I invention could be made by a  
15 materially different process from that of the group II invention, for example, the second  
insulating layer positioned on the portion of the substrate in the second region comprises  
a tunneling oxide layer could be formed before the control gate.

- 20 Because these inventions are distinct for the reasons given above and have acquired  
a separate status in the art as shown by their different classification, restriction for  
examination purposes as indicated is proper.

- Applicant is advised that the reply to this requirement to be complete must include  
an election of the invention to be examined even though the requirement be traversed (37  
25 CFR 1.143).

Applicant is reminded that upon the cancellation of the claims to a non-elected

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invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(I).

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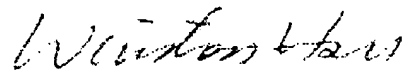
**Response:**

Applicant hereby elects invention I in response to the above restriction requirement. The claims readable upon the elected invention are claims 1-8. Thereafter, claims 9-20  
10 have been canceled. No new matter is introduced.

Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

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Sincerely yours,

Date: July 28, 2006

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25 Note: Please leave a message in my voice mail if you need to talk to me. (The time in D.C. is 12 hours behind the Taiwan time, i.e. 9 AM in D.C. = 9 PM in Taiwan.)

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